

LIBRARY
SUPREME COURT, U. S.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1958

No. 269

Office Supreme Court, U.S.

FILED

MAR 2 1959

JAMES R. BROWNING, Clerk

MARION S. FELTER, on behalf of him-
self and others similarly situated,

Petitioner,

VS.

SOUTHERN PACIFIC COMPANY, et al.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals
for the Ninth Circuit.

PETITIONER'S REPLY BRIEF.

ROLAND C. DAVIS,

900 Balfour Building,
San Francisco 4, California,

V. CRAVEN SHUTTLEWORTH,

1120 Merchants National Bank Building,
Cedar Rapids, Iowa,

HARRY E. WILMARTH,

1120 Merchants National Bank Building,
Cedar Rapids, Iowa,

Attorneys for Petitioner.

CARROLL, DAVIS, BURDICK & McDONOUGH,

900 Balfour Building, San Francisco 4, California,

ELLIOTT, SHUTTLEWORTH & INGERSOLL,

1120 Merchants National Bank Building,

Subject Index

I	Page
Respondents by their briefs concede that the Railway Labor Act prohibits a carrier from deducting and a labor organization from receiving dues from the wages of an employee no longer a member of that organization. Respondents' interpretation of their dues deduction agreement admittedly imposed such an unlawful restraint upon petitioner, and the agreement is, therefore, invalid under the Act....	1
II.	
Respondents' briefs disclose that the real purpose of the restriction is to construct a device designed to frustrate petitioners and others similarly situated in the exercise of their statutory right of revocation	7
III.	
Petitioner is not bound by a contract provision which was negotiated in excess of respondents' authority and which was contrary to the Railway Labor Act:.....	10
Conclusion	11

Table of Authorities Cited

Cases	Page
American Screw Machine Co., 122 NLRB No. 174.....	10
Britt v. Trailmobile, 179 F.2d 569 (C.A. 6, 1950), certiorari denied 340 U.S. 20	11
Brotherhood of Railroad Trainmen v. Switchmen's Union of North America, 358 U.S. 818; 3 L.Ed. 2d 60 (10/13/58)	6
Ford Motor Co.-United Auto Workers, 5 CCH Labor Law Reporter 59,293	9
General Motors Corp.-United Auto Workers, 5 CCH Labor Law Reporter 59,021	9
Goodrich Rubber Co.-United Rubber Workers, 5 CCH Labor Law Reporter 59,213	9
Lewis v. Jackson & Squire, Inc., 86 F.Supp. 354 (W.D. Ark., 1949)	11
Local No. 234 etc. v. Henley & Beckwith, Inc., (Fla. 1953) 66 So.2d 818	11
Pittsburgh Plate Glass-Glass Blowers Union, 5 CCH Labor Law Reporter, 59,495	9
Plumbers & Steamfitters v. Dillon, 255 F.2d 820 (C.A. 9, 1958)	11
Switchmen's Union v. Southern Pacific Co., 253 F.2d 81 (C.A. 9, 1957)	6
Wallace Corp. v. NLRB, 323 U.S. 248	11

Statutes

Labor Management Relations Act (29 U.S.C. Sec. 302).....	8
45 U.S.C. 152, Eleventh (c)	2
Railway Labor Act, Section 2, Eleventh (c)	11

Texts

5 CCH Labor Law Reporter 59,263 at 59,271	8
---	---

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1958

No. 269

MARION S. FELTER, on behalf of him².
self and others similarly situated,

Petitioner,

VS.

SOUTHERN PACIFIC COMPANY, et al.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals
for the Ninth Circuit.

PETITIONER'S REPLY BRIEF.

I.

RESPONDENTS BY THEIR BRIEFS CONCEDE THAT THE RAIL-
WAY LABOR ACT PROHIBITS A CARRIER FROM DEDUCT-
ING AND A LABOR ORGANIZATION FROM RECEIVING DUES
FROM THE WAGES OF AN EMPLOYEE NO LONGER A MEM-
BER OF THAT ORGANIZATION. RESPONDENTS' INTERPRE-
TATION OF THEIR DUES DEDUCTION AGREEMENT AD-
MITTEDLY IMPOSED SUCH AN UNLAWFUL RESTRAINT
UPON PETITIONER, AND THE AGREEMENT IS, THEREFORE,
INVALID UNDER THE ACT.

In the proceedings in the trial court and prior
thereto, both respondents insisted that they construed
their check-off agreement as denying any validity to

the written revocations of dues deduction even though petitioner and others had terminated membership in the BRT. In their briefs to this Court, however, respondents now shift their position and assert for the first time that if petitioner and others had directly notified the carrier of their termination of membership in the BRT, deductions from their wages would have been immediately discontinued irrespective of their revocation notices (BRT Br. pp. 15, 16; Carrier Br. pp. 12, 13).

The BRT in its brief states (BRT Br. p. 15):

"Had the petitioner notified the Southern Pacific Company of this change of unions no more dues deductions would have been made *regardless of a revocation*, for payment of wages to any other union than the one in which the employee is a member is forbidden by the Railway Labor Act."* [Citing and quoting 45 U.S.C. 152, Eleventh (c).]

The carrier in like vein now argues to this Court that it would have discontinued wage deductions if it had been provided with direct information that the petitioner had terminated his BRT membership (Carrier Br. 12-13).

Respondents have thus made a material admission of law bearing directly upon the first question submitted to this Court on certiorari. Moreover, the record of this case, which is without conflict, contains

*Italics where found in the quotations used in this Brief have been supplied.

respondents' further admissions that they had knowledge of petitioner's termination of membership in the BRT at the time they asserted that it was, nevertheless, their purpose to apply their dues deduction agreement so as to require a continuance of such deductions from petitioner's wages. It is precisely such an application of a dues deduction agreement, now admitted by the respondents, which makes the agreement invalid, as petitioner has pointed out to this Court in discussing the first question presented on certiorari (Pet. Br. pp. 23-25).

The complaint expressly alleged that plaintiff and others similarly situated had terminated membership in the BRT and had sent written revocations to both respondents (R. 7). The complaint further alleged in paragraph XII, which allegation both the carrier and the BRT admitted, that (R. 7, 36, 63)

"The defendant carrier has advised plaintiff and others similarly situated that it will not honor such written revocations, due receipt of same having been acknowledged, but that the defendant carrier would continue to deduct from the wages of plaintiff and others similarly situated and pay to the defendant Brotherhood such sums as the Brotherhood indicated would be required to pay periodic dues, initiation fees and assessments owed by and charged against plaintiff and others similarly situated, *even though they were no longer members of the Brotherhood.*"

Both respondents thus unequivocally asserted of record that deductions from the wages of petitioner and others would be continued and paid to the BRT

4

as periodic dues of membership despite termination of membership in the BRT.

The BRT, while conceding that petitioner and others had terminated their membership in that organization, further admitted the allegations of paragraph XIII of the complaint that (R. 7, 36):

"The defendant Brotherhood has advised the plaintiff and others similarly situated that it will not honor their notices of termination of membership in the Brotherhood, nor forward to the Carrier the revocation of assignments received by it from the plaintiff and others similarly situated . . . and will continue to collect sums from wages due plaintiff and others similarly situated."

The carrier likewise admitted the similar allegations of paragraph XIV of the complaint (R. 8, 63).

We thus find the BRT stating to this Court the inability, as a matter of law, of the carrier to deduct, and it as an organization to receive, dues from the wages of one no longer a member, and on the other hand admitting as a matter of record, as did the respondent carrier, that such deductions would be made from the wages of petitioner and others even though no longer members of the BRT. In the face of these admissions we find the BRT still protesting its willingness to forward petitioner's dues revocation notices promptly to the carrier if submitted on forms printed, furnished by and returned to the BRT in the first instance. It would seem that an organization that claims to assume all responsibility for record keeping with regard to dues, collection and revocations, would

be quick to notify the carrier of any termination of memberships in order to avoid collections of "dues" that it concedes are forbidden by law and which are deducted from the wages of individuals who do not owe them. It would further seem that the carrier, claiming to be interested in "orderly procedures," would be most anxious to avoid the deduction of "dues" from the wages of employees not owing such dues and diverting them to an organization not entitled to them by law. This inconsistency between respondents' admissions and their actual conduct points up once again the total absence of any justification in the law or the record for the position they assert.

The carrier argues at some length to this Court that it did not have knowledge of the termination of membership of petitioner and others in the BRT, albeit recognizing the likelihood of such possibility (Carrier Br. 12, 13). The carrier's position can more properly be analyzed by considering the fact that the carrier filed its answer to the petitioner's complaint in the trial court a week after the BRT had conceded such termination of membership as a matter of record (R. 35, 38, 62, 64). Notwithstanding such concession, the carrier answered the complaint and continued to assert throughout the proceedings below that it would continue to deduct dues and other sums from the wages of petitioner and others and pay such sums over to the Brotherhood "even though they were no longer members of the Brotherhood" (R. 7, 63).

It is apparent that respondents have belatedly acknowledged the lack of justification for the collection

of dues from the wages of an employee and the diversion of such funds to a union of which such employee is no longer a member.¹

In an effort to find a tenable position, and disregarding the record, respondents now argue that the petitioner and others should have terminated the wage deductions by notifying the carrier of their termination of membership in the BRT. In assuming this new position, the respondents effectively abandon the claim that all notices must be transmitted through the BRT on forms prepared by and furnished by that organization, as a means of providing an "orderly procedure."

Both respondents profess to be gravely concerned over bookkeeping problems and forgeries when seeking to support the contention that "orderly procedure requires an employee to handle all revocation matters with and through the BRT," including the obtaining of revocation forms from and transmitting such revocations through the BRT. This concern vanishes entirely, however, when we find the respondents contending that the employee must assume complete responsibility for directly notifying the carrier of his termination of union membership at the cost of suffering continued deductions from his wages for "dues" payable to a union to which he no longer belongs and which takes no responsibility for notifying the carrier that he is not a member.

¹See *Switchmen's Union v. Southern Pacific Co.*, 253 F.2d 81 (C.A. 9, 1957), certiorari denied sub nom.; *Brotherhood of Railroad Trainmen v. Switchmen's Union of North America*, 358 U.S. 818, 3 L.Ed. 2d 60 (10/13/58).

It is respectfully submitted that in seeking to change their position before this Court the respondents have succeeded only in demonstrating the basic fallacy of their claim that the revocation procedure created in their dues deduction agreement is necessary to promote "orderly procedure."

II.

RESPONDENTS' BRIEFS DISCLOSE THAT THE REAL PURPOSE OF THE RESTRICTION IS TO CONSTRUCT A DEVICE DESIGNED TO FRUSTRATE PETITIONER AND OTHERS SIMILARLY SITUATED IN THE EXERCISE OF THEIR STATUTORY RIGHT OF REVOCATION.

The respondents' claim of "orderly procedure" has always been asserted in a vacuum without basis in the record. No pleading was made or evidence offered in support of a need for such procedure. The first reference to it appears by way of the following conclusional statement by the trial court (R. 69):

"A change in unions, and thus a change in dues deduction, obviously involves many bookkeeping and record changes on the railroad's part."

The respondents have marshalled no other authority, but their briefs are replete with such statements as: "If each employee acted on his own, as petitioner contends, it is obvious that only confusion would result" (BRT Br. p. 2); "any other interpretation . . . would lead to constant controversy and confusion" (SP Br. p. 14); ". . . it would be impossible to keep accurate records" (BRT Br. p. 13); "it seems ex-

plicit in the wording of the statute that an employee is to furnish the . . . revocation of dues deductions through the labor organization . . . and not individually" (BRT Br. p. 13).²

A consideration of other contracts which apply a like provision of the Labor Management Relations Act (29 U.S.C. §302) demonstrates the fanciful character of respondents' arguments. Countless major companies and unions regularly execute agreements providing for dues deductions which provide for individual revocation without requiring the type of "orderly procedures" argued for by respondents; yet these organizations are not "obviously confused" nor can it be presumed that they find it "impossible to keep accurate records."

Representative of such agreements is that concluded between Consolidated Edison Co. and the Utility Workers Union. The applicable section provides, in part, that dues may be deducted for union members who sign "individual authorizations for such deductions which are on file with the Edison Company and have not been revoked or cancelled in writing and which specifically provide that they may be revoked or cancelled in writing by the signing individual at any time." (5 CCH Labor Law Reporter 59,263 at 59,271). The agreement quoted contains no require-

²See e.g. (BRT Br. p. 11) where respondent concludes, without citation, that "it was never contemplated that the individual could just write an authorization or revocation *on a piece of paper*;" but petitioner pointed out (Pet. Br. p. 19) that Senator Hill used that exact terminology in confirming the rights of individual employees under the law.

ments as to the form of revocation, who shall prepare it nor for the processing of any revocation by or through the union prior to its becoming effective by the simple act of filing it with the company. (See also *General Motors Corp.-United Auto Workers*, 5 CCH Labor Law Reporter 59,021 at 59,024-25; *Ford Motor Co.-United Auto Workers*, 5 CCH Labor Law Reporter 59,293 at 59,300; *Goodrich Rubber Co.-United Rubber Workers*, 5 CCH Labor Law Reporter 59,213 at 59,218; *Pittsburgh Plate Glass-Glass Blowers Union*, 5 CCH Labor Law Reporter, 59,495 at 59,499.)

These agreements are in operation with some of the largest employers in the United States. As these contracts demonstrate, the question before the court is not one of "orderly procedure" as opposed to no procedure, as respondents would have this court believe, but rather the question posed is whether the restrictions on revocation adopted by the carrier and BRT in this case are invalid because they are unauthorized by the Act and because such restrictions impinge on the individuals' statutory right to revoke the assignment at any time after one year has elapsed.

The real purpose for the provisions in respondents' dues deduction agreement, as interpreted by the parties thereto, is explained by the BRT in its brief to this Court (BRT Br. p. 11):

"Sometimes, as a practical matter, an employee needs protection against himself as well as from outside undue influence, and the procedure set up in the agreement in question affords that protection by requiring both the authorization and revo-

cation of dues deductions to be made on the proper form obtainable from his own representative."

This bland statement by the BRT³ obviously has nothing to do with bookkeeping procedures. The "practical" implication of the statement is that a union may negotiate a dues deduction agreement which will enable it to exercise a domination over the employee. Implicit in this statement is the assumption that the employee is the subject of the union and should be insulated from the free exercise of his own independent judgment. In protecting the employee "against himself" the union, as a practical matter, seeks to perpetuate itself. It is from this type of paternalistic "protection" that the petitioner and others similarly situated are entitled to be relieved as an interference with rights provided by the Railway Labor Act.³

III.

PETITIONER IS NOT BOUND BY A CONTRACT PROVISION WHICH WAS NEGOTIATED IN EXCESS OF RESPONDENTS' AUTHORITY AND WHICH WAS CONTRARY TO THE RAILWAY LABOR ACT.

Respondents seek to avoid the consequences of the lack of legislative authorization for their action by contending that petitioner is nonetheless bound by the negotiations of the parties to the agreement (BRT

³See *American Screw Machine Co.*, 122 NLRB No. 174, a recent decision under an analogous statute, where the NLRB struck down a similar effort by an employer and a union to interfere with the free choice of an employee in respect to withdrawal from a dues deduction arrangement.

Br. p. 5-7; SP Br. p. 14-15). Contrary to respondents' assertions, agreements which are violative of a valid statute or are against public policy are neither binding upon the individual nor are they capable of ratification. *Wallace Corp. v. NLRB*, 323 U.S. 248, 256; *Local No. 234 etc. v. Henley & Beckwith, Inc.*, (Fla. 1953) 66 So.2d 818; *Lewis v. Jackson & Squire, Inc.*, 86 F.Supp. 354 (W.D. Ark., 1949); cf. *Plumbers & Steamfitters v. Dillon*, 255 F.2d 820 (C.A. 9, 1958); *Britt v. Trailmobile*, 179 F.2d 569 (C.A. 6, 1950), *certiorari denied* 340 U.S. 20.

Therefore when the respondents exceeded the congressional mandate by interpreting their agreement *inter se* so as to exercise a control over petitioner's right of revocation, the respondents could not thereby bind the petitioner or others similarly situated.

CONCLUSION.

The facts are undisputed that petitioner submitted his revocation of wage assignment in the form required by the parties and that petitioner had resigned from membership in the BRT. The insistence of respondents in these circumstances that petitioner obtain from the BRT another form exactly the same in content as his original revocation and differing only in the source of the printing thereof is not only "a bit arbitrary" (R. 69), but in addition enabled the respondents to pursue a course that respondent BRT itself admits is unlawful under Section 2, Eleventh(c) of the Railway Labor Act. (BRT Br. 15).

The only justification sought for such course of conduct is that the restriction invoked enables the BRT to determine that "the revocation is the result of a considered decision by the employee" and to "protect" the employee "against himself." Far from being a justification, the purpose of the restriction is thus exposed as an unlawful interference with the right of revocation. The net result is that the respondent carrier is diverting funds from the wages of the petitioner under the guise of "dues" to an organization, the respondent BRT, of which petitioner admittedly is not a member and to which he owes no dues.

Petitioner respectfully submits that his assertion of his right of revocation in this cause, based as it is on the very wording of the statute, legislative history and the general course of decisions under analogous law, should be sustained and the decisions of the lower courts reversed.

Dated, San Francisco, California,

February 25, 1959.

Respectfully submitted,

ROLAND C. DAVIS,

V. CRAVEN SHUTTLEWORTH,

HARRY E. WILMARTH,

Attorneys for Petitioner.

CARROLL, DAVIS, BURDICK & McDONOUGH,

ELLIOTT, SHUTTLEWORTH & INGERSOLL,

Of Counsel.